IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.1545/2002

1. Harswaroop S/o Shri Sagar
2. Sagar S/o Shri Chirmoli
3. Kela W/o Shri Sagar

Versus

State of Rajasthan through PP

Date of Judgment :::: 17th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri S.S. Hasan with
Shri Rajveer Singh and
Ms. Dilshad Khan, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the State

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//Reportable//

By the Court:-

This appeal on behalf of three appellants, namely, (1) Harswaroop S/o Shri Sagar, (2) Sagar S/o Shri Chirmoli and (3) Kela W/o Shri Sagar, is directed against the judgment and order dated 13.11.2002 passed by the Additional District & Sessions Judge, Deeg (Bharatpur) in Sessions Case No.32/1999, whereby the accused-appellants have been convicted under Section 304-B, IPC, to undergo 7 years simple imprisonment.

Briefly stated the facts of the case are that a written-report dated 16.12.1998 (Exhibit P-9) was lodged at the Police Station Kotwali - Deeg by PW-8 Motiram about the death of his daughter Imarti Devi at her matrimonial house under abnormal circumstances. It

was mentioned in the report that his daughter Imarti Devi married with Harswaroop in June, 1995, he gave sufficient dowry in her marriage, but her husband Harswaroop, mother-in-law Kela and father-in-law Sagar were not satisfied with the dowry given in the marriage, therefore, they used to harass and assault his daughter. They demanded motorcycle and other silver and gold ornaments but he was unable to give the same. It was also mentioned that about one-and-half-year ago Imarti Devi gave birth to a male-child and on the birth-ceremony called 'chhuchhak' a demand of motorcycle, gold chain, ring, silver ornaments and 21 'saaries' were made. But, he shown his inability to send all these articles. It was also mentioned that on 15.12.1998 he received a message that his daughter has been killed by her in-laws by setting her on fire by pouring kerosene oil on her body.

On the basis of this report, FIR No.728/1998 was registered under Section 304-B/34, IPC. The postmortem of Imarti Devi was conducted. The accused-appellants were arrested.

After completion of investigation, the police filed charge-sheet against all the three appellants under Section 304-B/34, IPC. The trial court framed charge against the accused-appellants under Section 304-B, IPC, which was denied and trial was claimed.

The trial court, after considering the evidence on the record, convicted and sentenced the accused-appellants, as mentioned above.

The learned counsel for the appellants contended that two ingredients of Section 304-B, IPC, are proved in the case that Imarti Devi died within 7 years of her marriage and she died under abnormal circumstances. But, so far as the third ingredient that she was subjected to cruelty or harassment by her husband or the relatives of her husband for, or in connection with, any demand of dowry in connection with her marriage, is concerned, the same is not proved from the prosecution evidence and the learned trial court, without considering the relevant evidence in this connection wrongly convicted and sentenced the accused-appellants. He further contended that the marriage of deceased took place in June, 1995, and, as per the prosecution evidence, it is clear that about one-and-half-year ago of her death, she gave birth to a male-child and birth ceremony was to be celebrated which is called 'chhuchhak', and as per customs of local societies number of formalities are required to be performed by the parents of Imarti Devi, and, in case, any demand was made in connection with 'chhuchhak' then the said demand cannot be said to be a 'demand of dowry' in connection with her marriage. The trial court misconstrued the evidence of demand

relating to 'chhuchhak' as demand of dowry in connection with marriage and wrongly convicted the appellants under Section 304-B, IPC, therefore, their conviction is liable to be set-aside and the accused-persons are entitled to be acquitted.

The learned Public Prosecutor supported the judgment of the trial court and contended that Smt. Imarti Devi died within 7 years of her marriage under abnormal circumstances, and, from the prosecution evidence, it is clear that demand of dowry, which was made at the time of marriage, continued till the date of her death and the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, demand of dowry, and the trial court rightly convicted the accused-appellants. Therefore, there is no merit in this appeal and the same be dismissed.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

There is no dispute that the marriage of deceased Imarti Devi took place with the appellant Harswaroop in the year 1995 and she died on 15.12.1998 at her matrimonial house. As per the postmortem report Exhibit P-13 the cause of death, in the opinion of the

Medical Board was as under:-

> "In our opinion the cause of death is shock as a result of extensive burns along with attempted throttling. However, viscera are preserved and sent to chemical examiner (F.S.L. Jaipur) for detection of common poisons."

The description of injuries as mentioned in the postmortem-report is as under:-

> "(i) burns present allover body. Epidermal 1st & 2nd degree (superficial) present on front of body, upper and lower limbs and face. Dermo-epidermal (3rd & 4th degree) on back of body, postural surface of upper & lower limbs, superficial burns also present on vulva. Sine of Redness present with separate process therefore burs are Antemortem.
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> (ii) Lacerated wound 5 cms x 3 cms x 1 cm present left side of vaginal wall medial surface.
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> (iii) Dissection of neck we found petechial hemorrhages in subcutaneous tissues and muscles on both side of neck, more marked on left side of neck."

In view of above, it is clear that Smt. Imarti Devi died within seven years of her marriage due to shock as a result of extensive burn injuries. The question for consideration in the present case is as to whether deceased Imarti Devi was subjected to cruelty or harassment soon before her death by her husband or any relative of her husband for, or in connection with, any demand for dowry. The 'dowry' has

been explained below Section 304-B, IPC, that it shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. Therefore, demand of dowry should be related to marriage and not for any other purpose. The trial court has convicted all the three appellants under Section 304-B, IPC.

In order to determine the question in the present case, it will be relevant to refer the Section 304-B as well as 498-A, IPC, which are reproduced as under:-

> "**304B. Dowry death**.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
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> Explanation.- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
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> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."
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> "**498A. Husband or relative of husband of a woman subjecting her to cruelty**.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment for a

term which may extend to three years and shall also be liable to fine.

Explanation.-For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

Section 113-B of the Evidence Act is also relevant for the purpose of Section 304-B, IPC, therefore, Section 113-B, IPC is also reproduced as under:-

"**113B. Presumption as to dowry death**.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this Section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code, (45 of 1860)."

In order to convict an accused for an offence under Section 304B, IPC, the following ingredients

must be satisfied in a case:-

(1) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(2) such death must have occurred within 7 years of her marriage;

(3) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(4) such cruelty or harassment must be for or in connection with demand of dowry.

If the aforesaid ingredients are established by acceptable evidence in a case then such death of a woman shall be called "dowry death" and such husband or his relative will be deemed to have caused her death. It is relevant to mention that punishment for the offence of dowry death u/s.304B, IPC, is imprisonment of not less than 7 years, which may extend to imprisonment for life. Unlike under Section 498A, IPC, husband or relative of husband of a woman subjecting her to cruelty shall be liable for imprisonment for a term which may extend to three years and shall also be liable to fine. Normally, in a criminal case accused can be punished for an offence on establishment of commission of that offence on the

basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304B, IPC, an exception is made by deeming provision as to nature of death as "dowry death" and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution.

The learned counsel for the appellant also contended that there is no specific instance to prove any assault or harassment of the deceased by her in-laws for, or in connection with, demand of dowry in connection with her marriage, and the so-called demand made before one-and-half-year of her death is concerned, the same was relating to 'chhuchhak' ceremony, which was to be solemnized on birth of male-child of deceased.

The learned counsel for the appellant has referred the following judgments in support of his contentions:-

In Satvir Singh Vs. State of Punjab – (2001) 8 SCC 633, the Hon'ble Apex Court considered the definition of "dowry" as defined under Section 2 of the Dowry Prohibition Act, 1961, with reference to the offence under Section 304-B of the IPC, and held that it should be any property or valuable security given or agreed to be given in connection with the marriage. Customary gift or payment in connection with birth of child or other ceremonies unrelated to the marriage ceremony, held, do not fall within the ambit of "dowry". The relevant Para No.21 of the judgment reads as under:-

> "21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry

> mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage."

In K. Prema S. Rao Vs. Yadla Srinivasa Rao - (2003) 1 SCC 217, the Hon'ble Apex Court considered the definition of "dowry" in the context of offence under Section 304-B, IPC, along with Section 113-B of the Evidence Act, and held that one of the key ingredients of the offence is that deceased must have been subjected to cruelty and harassment "in connection with the demand for dowry" shortly before her death. Para 16 of the judgment reads as under:-

> "16. The evidence which has been found acceptable by the courts below against Accused 1 is that the cruel treatment and harassment of the deceased by him led her to commit suicide which was a death "otherwise than under normal circumstances". To attract the provisions of Section 304-B IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry". There is no evidence on record to show that the land was demanded as a dowry. It was given by the father to the deceased in marriage ritual as *pasupukumkuma*. The harassment or cruelty meted out to the deceased by the husband after

> the marriage to force her to transfer the land in his name was "not in connection with any demand for dowry". One of the main ingredients of the offence of "demand of dowry" being absent in this case, the High Court cannot be said to have committed any error in acquitting Accused 1 for offence under Section 304-B IPC."

In **Appasaheb & Another Vs. State of Maharashtra – 2007 (1) Crimes 110 (SC)**, their Lordships of the Hon'ble Supreme Court considered the similar point in the context of offence under Section 304-B, IPC, with the meaning of "dowry" as defined under Section 2 of the Dowry Prohibition Act, 1961, and held that giving or taking or property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. Para No.9 of the judgment reads as under:-

> "9. Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than

under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

> Section 2 of Dowry Prohibition Act reads as under:
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> "2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly -
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> (a) by one party to a marriage to the other party to the marriage; or
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> (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some

> connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. AIR 1996 SC 3509) AND Chemical and Fibers of India v. Union of India AIR 1997 SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

In the light of submissions made by learned counsel for the appellant as well as the case law cited at the Bar, it is now necessary to discuss the prosecution evidence available in the present case.

There are two sets of prosecution-witnesses in the present case examined on their behalf; the first set relates to relatives of deceased, who are residents of parental village Bedam, namely, PW-5 Mansingh, PW-6 Radheyshyam, PW-7 Gokal, PW-8 Moti (father of deceased) and PW-13 Bhagwati (mother of deceased); another set of prosecution witnesses is of residents of matrimonial village Nagla Faujdar, where deceased married i.e. the village of the appellants, and they are – PW-1 Ajaysingh, PW-2 Devisingh, PW-3 Prahlad, PW-4 Dalsingh, PW-9 Bhikam and PW-15 Netram. These six prosecution witnesses of second set were declared hostile by the prosecution during trial of the case.

So far as evidence relating to cruelty or harassment of deceased soon before her death is concerned, the best evidence can be of the deceased herself and in her absence, the best evidence can be of her parents or brothers or sisters. There is no dying-declaration of deceased in the present case. However, the statement of PW-8 Moti (father) and PW-13 Bhagwati (Mother) are available on the record. Therefore, most important prosecution-witnesses in the present case are PW-8 and PW-13.

PW-8 Moti, in his statement, stated that at the time of marriage of Imarti he gave Rs.31,000/- in cash; he also gave utensils and clothes etc. in dowry.

However, accused-persons Harswaroop, Sagar and Kela were not satisfied; they refused to accept their 'coin' and thirty-one-thousand rupees in cash, and threw the same but on the intervention of villagers, the same were given to them back. The deceased Imarti Devi delivered a male-child after two years of her marriage and/or about one-and-half-year ago of her death at her matrimonial house. They had gone to her in-laws house to tell her in-laws to send them 'Gur' (Invitation after fixing programme to celebrate birth ceremony of child, known as 'chhuchhak' ceremony) but they told that they will send 'Gur' provided they fulfill their demand and their demand is motorcycle, gold chain and ring. They were unable to fulfill their demand, therefore, 'chhuchhak' ceremony did not take place. Thereafter they heard about death of their daughter Imarti Devi.

PW-13 Bhagwati, the mother of the deceased, also stated that a sum of Rs.31,000/-, clothes, utensils, necessary ornaments were given in the marriage to Imarti Devi but Harswaroop was demanding motorcycle and Sagar was demanding fifty-one-thousand rupees. Whenever Imarti Devi came at Village Bedam, she used to tell her that her in-laws used to beat her for less dowry. She further stated that, about one-and-half-year ago of her death, Imarti gave birth to a male-child, but her in-laws did not send them 'Gur' as they were unable to give

them motorcycle, gold ring, chain and 21 'sarees' in 'chhuchhak' ceremony.

The another fact whether deceased Imarti was set on fire after pouring kerosene-oil by her in-laws or she herself committed suicide is concerned, the trial court has considered the prosecution evidence, in detail, and has recorded a finding that deceased set herself on fire after pouring kerosene-oil by herself and it is a case of suicide committed by the deceased. In this connection, the site-plan (Exhibit P-5) and the statement of PW-15 Netram are relevant. PW-15 Netram specifically stated that after hearing hue and cry he went to the house of the appellants and after breaking the door the dead-body of Imarti was taken out of room. His statement is corroborated with Exhibit P-5, the site-plan, also. However, a suicidal death is also an abnormal death, therefore, it is also covered within the meaning of 'dowry death' as defined under Section 304-B, IPC, therefore, there is no dispute that even if it is a case of suicidal-death and in case it is proved that the deceased committed suicide because of cruelty or harassment to her by her husband or relatives of her husband for, or in connection with, demand of dowry, then it will fall within the four-corners of Section 304-B, IPC, itself.

From the statements of PW-8 Moti and PW-13

Bhagwati, the parents of the deceased, as discussed above, it is clear that marriage of Imarti Devi took place in June, 1995, and for about two years after her marriage there was no specific instance relating to demand of dowry by her in-laws. The only specific instance in this regard, relates to a period when Imarti Devi delivered a male-child and 'chhuchhak' ceremony was to be performed. According to the statements of PW-8 and PW-13, the in-laws of Imarti Devi demanded a motorcycle, gold chain and ring and silver-ornaments with clothes at 'chhuchhak' ceremony but they were unable to give the same. PW-8 and PW-13 have not stated anything regarding cruelty or harassment of Imarti Devi for, or in connection with, demand of dowry, in connection with her marriage during the period of one-and-half-year before her death.

PW-8 Moti specifically admitted in his statement that in last four months of her death Imarti Devi did not come at his village Bedam nor any member of his family went to her matrimonial house at village Nagla Faujdar. This fact shows that in last four months nothing happened with Imarti to show any cruelty or harassment of deceased for, or in connection with, demand of dowry in connection with her marriage.

In view of the above discussion and analysis of

the prosecution evidence, it is clear that there was no cruelty or harassment by appellants on the person of deceased Imarti, soon before her death, for, or in connection with, demand of dowry in connection with her marriage. The learned trial court did not consider the prosecution evidence correctly and wrongly convicted the accused-appellants under Section 304-B, IPC. The finding of the trial court in this regard is liable to be set-aside and the same is hereby set-aside.

However, after considering the prosecution evidence including the statements of PW-8 and PW-13, I find that the evidence of cruelty with deceased by appellants, so as to attract the offence under Section 498-A, IPC is concerned, the same is available in the present case and, in my view, the accused-appellants are liable to be convicted for the offence under Section 498-A, IPC.

In view of the above discussion and reasons given, the appeal of the appellants is partly allowed; their conviction and sentence under Section 304-B, IPC, passed by the trial court is set-aside, but they are convicted under Section 498-A, IPC, to undergo 3 years RI and a fine of Rs.2,000/-; in default of payment of fine, to further undergo one month’s additional SI.

There is no dispute in between both the parties that accused-appellant Harswaroop has already remained in jail for about 5 years and 10 days; appellant Smt. Kela for about 4 years 8 months and appellant Sagar for about 6 years 2 months, therefore, they have already completed their sentence of imprisonment awarded under Section 498-A, IPC. The appellants are in jail, therefore, it is directed that the appellants Harswaroop S/o Sagar, Smt. Kela W/o Sagar and Sagar S/o Chirmoli be set at liberty forthwith, if their custody is not required in any other case.

(Narendra Kumar Jain) J.

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